IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.4234 OF 2006

Harshad @ Arshad Rais Shaikh .. ..Applicant

Versus

The State of Maharashtra .. ..Respondent

Mr. R.D.Suryawanshi for applicant

Mr. P.A.Pol, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 29TH NOVEMBER, 2006

P.C.:

1. The applicant is arrested by Bazarpeth Police Station in connection with C.R.No.II-45/2006 alleging offences punishable under Sections 20 and 27 of the Narcotic Drugs and Psychotropic Substances Act (for short NDPS Act). It is not disputed before me so also the court below that the applicant at the relevant time was arrested by Mahatma Phule Chowk Police Station, Kalyan in C.R.No.I-329/2006 alleging offences punishable under

Sections 342, 363, 394, 504 and 506 read with 34 of Indian Penal Code along with three others. He was on the relevant date removed from the lockup and was taken by police party to the court of J.M.F.C. Kalyan. After his court hearing upon return to Jail at Kalyan he was searched at the gate and 5 gms. of Charas was found hidden in his Chappal.

2. The argument before the court below as also before me is proceeding on the footing that the seizure is less than of the commercial quantity that is a small quantity. Therefore, the bar under Section 37 of the NDPS Act is not applicable. The application before the trial court as also before me is opposed on the ground that while in custody the applicant has dared to smuggle the Charas in Jail and this makes the offence a grave and serious one. The Applicant has criminal antecedents.

3. In my view, none can dispute the fact that the present application ought to have been considered in the light of NDPS Act and the mandate therein to enlarge the applicant on bail. If the Act contemplates a situation of the applicant accused allegedly carrying a quantity which is less than commercial (small) not attracting the

prohibition then his application for bail could not be refused on the ground that his antecedents are not proper. He is admittedly accused of offences punishable under IPC that is how he was detained in custody in those cases. The instant act is committed during the course of his custody. That apart, Mr. Suryawanshi states that barring this case the applicant is enlarged on bail in all IPC cases.

4. The fact pertaining to recovery being of a small quantity and therefore, the prohibition under the act not being applicable is not disputed. The applicant is entitled to be enlarged on bail. However, considering his conduct and the serious nature of the allegations, it would be proper to impose stringent conditions. Hence, the following order :

O R D E R :

(i) The applicant arrested in connection with C.R.No.II-45 of 2006 registered with Bazar Peth Police Station, Kalyan shall be enlarged in the sum of Rs.25,000/= each with one or two local

sureties in the like amount.

(ii) The applicants shall report to Bazar Peth Police Station, Kalyan once in a week till the conclusion of the trial court.

(iii) The order of bail will be given effect only after the Applicant furnishes to the investigating officer the details about his place of residence and addresses where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of the trial without prior intimation to the investigating office.

(iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

(v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay

the trail may be a ground for cancellation of bail.

(vi) Any observation made in this order shall not be construed as any finding or any expression of opinion of the merits of the case at the time of trial.

(vii) Application is disposed of in above terms.

(viii) Parties to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J.)